

MINUTES

WARRICK COUNTY AREA PLAN COMMISSION

Regular meeting in Commissioners Meeting Room,

Third Floor, Historic Court House,

Boonville, IN

Monday, November 9, 2015, 6:00 PM

PLEDGE OF ALLEGIANCE : A moment of silence was held followed by the Pledge of Allegiance.

MEMBERS PRESENT: Guy Gentry, President; Jeff Valiant, Vice-President; Richard Reid and Jeff Willis.

Also present were Morrie Doll, Attorney, Sheila Lacer, Assistant Director and Molly Barnhill, staff.

MEMBERS ABSENT: Bill Byers, Amanda Mosiman, Brad Overton

Roll call was taken and a quorum declared present.

MINUTES: Upon a motion made by Jeff Valiant and seconded by Richard Reid, the Minutes of the last regular meeting held October 12, 2015, were approved as circulated.

The President explained the Rules of Procedure to the audience.

REZONING PETITIONS:

AMENDED PC-R-15-12 – Petition of Bel Air Land, LLC, Brian Wedding, CEO to rezone 0.8 acres being Lot 80-C in the Replat of Lots 80-81 in Triple Crown Estates recorded in Plat File 1 Card 421 in the Office of the Warrick County Recorder, Ohio Twp. from “C-1” Neighborhood Commercial to “C-3” Highway Commercial zoning district. With a Use and Development Commitment. *Advertised in The Standard October 29, 2015.*

Rick Martin, Attorney and Renee Van Tassell, Bell Air Land, were present.

Mrs. Lacer stated this rezoning was heard by the Plan Commission at their September 14, 2015, meeting and received a recommendation of denial. She said it went before the Commissioners on October 12, 2015 and they asked to amend their application to include a Use and Development Commitment. She stated Mrs. Rector spoke with Attorney Doll and asked if further application included amendments or if it was a totally new application and he advised that he thought they could amend the current application and it could come back before the Board. She said they amended the application and it was re-advertised and they sent out new notices. She said the Use and Development Commitment states “Petitioner shall not use the property for any permitted use listed in Article XV, Section three (3) paragraphs two (2) through thirty-two (32), of the Comprehensive Zoning Ordinance for Warrick County, Indiana, with the exception of paragraph five (5) automobile,

trucks, motorcycle and trailer sales, new and used.” She said basically they are limiting the use in the C-3 zoning to just new and used car sales. She said they have submitted all of their return receipts from the last mailing. She said it is .82 acres and is projected to be Commercial in the Comprehensive Plan. She said the existing building was used as a floral shop. She said property to the east and west are zoned “C-1” Neighborhood Commercial with commercial businesses. She said the property to the south is zoned “R-3” Resort being part of Triple Crown Estates, a residential subdivision. She said property to the north is zoned “C-4” General Commercial with Walmart and vacant lots across SR 66. She said this property is in 100 Year Flood Plain so in order for any permits to be given in the flood plain the BFE will have to be established and a certified plot plan will need to be submitted certifying first floor elevations are at least 2 feet above the BFE. She said this is an existing building so this would only come into effect if they build anything new. She said they have existing access off of Ruffian Lane. She said the stated use is Used Auto Sales which would be allowed in the C-3 zoning. She said they obtained a Hold Harmless Agreement with the Warrick County Drainage Board giving consent for the placement of concrete pad up to 40’ from top of bank of Edwards Ditch. She said this relaxes the existing 75’ legal drain easement and allows them another 35’ for parking. She said they still need a consent agreement to allow them to be in the 70’ Vectren easement. She said there was a petition signed by 41 individuals against the rezoning that was heard on September 14th but none have been filed on this amended petition. She added that the petition is in the Board members packets. She said the application is in order.

Renee Van Tassell stated they do have the agreement with Vectren.

Rick Martin stated this was before the Planning Commission last month and one of the issues that was discussed was the amendment to have a Use and Development Commitment with this petition for rezoning and that is something that they have tendered and that was accurately read as to the parameters of that. He said the intended use is strictly for automobile, truck; basically a high end used car lot is what they have envisioned here. He said his client purchased the building in 2015 with the goal to create a luxury car dealership doing sales on site and via internet. He said they currently successfully operate other dealerships, one is Vann Auto which is in Evansville and he has a letter from one of their neighbors, Bret Schultheis with Schultheis Insurance. They submitted the letter to the Board. He said he thinks they can see from Mr. Schultheis’s letter these are nice car lots; they operate a clean and well managed business. He said these are nice cars on the lot; they are not junkers or anything that would detract from the neighborhood or the area. He said they run a successful business there and they have not created any issues or problems with their neighbors. He said he understands there is some concern with the neighbors here. He said they have a zoning map here to show the current status of what the zoning is. He said their property is the one with the bull’s eye and it is flanked on either side with C-1. He said C-3 is ERA, C-4 is Lefflers, and one of the C-1’s is Lics, and other businesses; so that is the general nature of that. He said across the street is C-4. He said if you go down from that you have Hardee’s and the library and some others that are zoned C-4 and faces Bell Road. He said so the area that fronts the highway and Bell Road is very commercial, so this isn’t spot zoning. He said he recognizes there is a neighborhood behind it but everything that fronts the highway there is commercial and there is access onto the highway as well. He said he thinks the proposed use of the C-3 with the Use and Development Commitment is consistent with what’s in the area there and it is not too inconsistent with what the present zoning is. He said he knows there is some concern about what types of business are located there so some of the businesses that could go in there right now without changing the zoning would be a laundry mat, a convenient store including fueling facility so a gas station and convenient store so long as they don’t

offer automobile service and repair. He continued a liquor store, an ice cream store, jewelry and leather stores, appliance repair, professional offices, dental offices, restaurants, retail furniture and office furniture and equipment. He said a lot of these things involve, in his experience a lot more traffic and a lot more people coming and going out of the area than at the present time. He said we have conducted a traffic count study. (They submitted the study to the Board.) He said they contacted Morley and Associates and contracted a two day traffic study for October 9th and October 10th of this year.

Richard Reid asked which days were those.

The President stated the letter says it was Friday and Saturday.

Rick Martin said as they can see, they are looking at a 24 hour traffic volume roughly in the 2000 range, a little higher on Friday 2,342 and 1,752 on Saturday with approximately 3-5% being heavy vehicles. He said the main point of this is by looking at the conversion rate we tried to extrapolate what we thought the additional traffic through that area would be based on this car dealership. He said conversion rate typically in the auto industry is about 10% and their target goal is to sell 20 cars a month; so they are looking at attracting about 200 customers a month to this business. He said they would be open 6 days a week so that would be roughly 24-25 days a month so they'd be looking at 2-3 cars a day would be what they would expect on average to be the traffic coming in and out of their business. He said let's compare and contrast that to Lic's Ice cream, he suspects they probably have well more than 2-3 cars in an hour during any given time of the day on the average. He said there is an optometrist office in there. He said he knows dental offices for example, which would be a permitted use in C-1, they typically see 3-4 patients an hour. He said this business here is not the type that would add a lot of traffic or congestion to the area. He said one of the other concerns that were mentioned by some of the remonstrators at the last meeting was kids coming in a hot rodding the cars up and down the street and again he does not think that is an issue. He said they have a graph showing the demographics and a display of the typical customers for the types of vehicles that will be sold at this dealership. (They submitted exhibits to the Board.) He said it is primarily a luxury car dealership so we are looking at Cadillacs, BMW's, Lexus, Mercedes, Audi, and Lincoln. He said those are the primary types of vehicles that they are looking to sell here and as they can see from the handout and the display the types of customers that would be attracted to this and would be looking to test drive and purchase these vehicles range in age from 50 to 62. He said so this is not the type of dealership that will be attracting young kids that are going to be speeding in the cars. He said they probably also have some restrictions on letting people test drive the cars, without insurance or being a serious potential customer. He said some benefits to having this type of business as opposed to some of the other permitted uses that are under C-1, most car dealerships will have security cameras on the lot so that will not only be a benefit to the business but to the community as well. He said some of their cameras will be pointed to the street as well so it would be an additional source of information for an illegal activity if the police want to have access to their cameras that would be something that would be possible. He said it will also create 5 fairly high paying jobs; 2 of which would be management type jobs that would probably pay in the one-hundred-thousand plus range and providing these employees with full benefits for them and their family. He said they have dealt with in the past local contractors. He said he believes it is Raben Tire they contract with so they will be doing business with other businesses in the community that will help the community grow. He said again just sort of looking at the factors to consider on the rezoning petition; does the proposed rezoning conform to the master development plan. He said he would say that it does, it is a

commercial area there. He said that highway frontage area is highly commercialized and allowing this additional use over some of the C-1 uses that could go in there he thinks is in harmony with the master development plan and it is also in harmony with the existing surrounding uses and the use trends there. He said how the heaviest use in the proposed zone will affect the neighborhood; it will result in something probably having less traffic than most of the permitted uses in C-1. He said traffic can be handled without unfavorably affecting the area. He said there is an economic need for the proposed use; they are going to create 5 jobs, they have a building that is currently vacant and has been vacant for some time and they have somebody that wants to put that to good use and he thinks that dealing with other businesses in the community will be something that is beneficial to the county and to the businesses that are here. He said this is not spot zoning; we have C-1, C-2, C-4 all in the same area and he thinks it is harmonious with the current use and current area. He said they ask they recommend approval to the Board of Commissioners of the amended petition with the Use and Development as submitted.

Kristi Senger approached the podium. She stated she lives on Citation Drive two doors down from the proposed car lot. She said he spoke about the factors considered in relationship to the rezoning petition and she thinks that is a good place to start. She said we won't talk about the master plan because the master plan just says it is commercial it doesn't address what kind of commercial it is. She said whether it's in harmony; if you think putting a car lot two doors down from your home is in harmony of it that would be up for you to decide if that is what you would want to see when you walk out your front door. She said she is okay with a Lic's being there and a flower shop because their products are not outside for her to see and the back of Ziedlers had trees and flowers and their proposed plan is to tear down the trees in the back and put more parking so she will be able to see more cars when she looks outside of her house. She said can traffic be handled; she is not going to argue she is sure Lic's probably does see more business than a car lot. She said we have seen car lots come and go out of Newburgh so clearly they haven't done as much business as they want to do. She said is there a lack of adequate of provisions for the proposed use type in the general area. She said there are tons of lots for sale in this area right behind Walmart in C-4. She said across the street from Walmart is another C-4 for sale. She said all along 66 there are lots of C-4 lots for sale. She there is even a C-4 lot right next to where Schnucks used to be behind O'Reilly Auto Parts. She said the curious thing about these lots being for sale is, in Bellmore Landing, a lot that size they would have to pay over \$375,000 for the lot alone; that doesn't include a building or a parking lot. She said they paid a little over \$300,000 for Zeidlers. She said clearly a C-1 is not as valuable as a C-3 or C-4; you'd have to pay more for a C-3 or C-4 to put a car lot on, which is where it is allowed. She said she feels like rezoning this to C-3 is actually taking business away from the people who have the proper zoning and property available for them to buy. She said another topic, is there an economic need for the proposed use in the general area. She said she doubts there are people driving around Newburgh saying they wish they could find another car lot. She said generally they are selling luxury cars and people who need a luxury car do not need it within walking distance. She said they have a vehicle to use to drive there; it is not usually their first car so it could be in Evansville and they could buy their car and the taxes would still come back to Warrick County when they register their vehicle. She said they could buy from the other areas that are already zoned C-4 that have invested more money into doing it properly. She said is the land suitable for the proposed development; she would like to point out that area is in a flood zone and it does flood. She said the concrete in the current lot floods when they have high rain. She said putting a bunch of expensive luxury cars on a lot that floods is questionable; adding more concrete to the area to park more cars on she thinks will have bad repercussions for the neighborhood causing more water to go back into the

neighborhood. She said it might not, she doesn't know a lot about water but if she knows a place fills with water when it rains, then she does not park her car there. She said the state law states that any rezoning constitutes an amendment to the master plan and the burden of proof should be on the applicant showing that the proposed rezoning is a benefit to the community, once again she doesn't think anybody is driving around saying this place would be better if they could have more cars for sale here. She said the next one, the rezoning is necessary for economic use of the property, clearly it is not. She said at the last meeting the lovely lawyer brought up to them that the reason the owner bought the property without checking the zoning is that somebody else was making an offer on the property and he made a quick decision without checking the zoning. She said clearly there was somebody that was willing to buy the property and from what they understand it was somebody that was in the proper zoning wanting to open a business there. She said the lot did not sit empty for months. She said Zeilder's barely moved out by the time they received the notice they were moving in. She said she does not believe that a business man that has made as much money as Mr. Wedding has did not check the zoning. She said she believes he knew he had a better chance of making money off of this property and paying \$315,000 for a lot that had facilities on it versus buying the same lot across the street where he would have to build something and spend more money. She said and then let's address the case of spot zoning. She said she included the Warrick County map and minutes from lots of different minutes that took place back in 2011 when the C-3 rezoning was done for the real estate office. She said she thinks it is important to notice that the only reason they made it C-3 was to have an electronic bill board. She said nobody stood up and fought against this because it was explained to them that it wouldn't hurt the community, it was just to change the bill board to electronic, the bill board would actually be shorter than it was and less visible from the homes, but now we see another person walking in a saying oh, we are not going to spot zone the neighborhood because there is already a C-3 there. She said with the C-4 areas, one is across the major highway and is where Walmart is. She said you can't walk there from their homes. She said all the other C-4's are not part of their neighborhood; they cannot see them from their homes. She said Premier Video is the only C-1 lots she can see from her property and she has to walk in the middle of the street to see the C-4 lots. She said but where they want to rezone she can see from her front door and their driveway is on that street. She said it is C-1 Neighborhood Commercial because it is part of their neighborhood. She said Lot 80 that they are trying to change is lot 80 Triple Crown. She said everything that connects to Triple Crown is C-1, everything else behind them has a huge wooded border between them and the library and bank, and they cannot see them. She added that she included pictures to submit to the Board. She said she mentioned security cameras, but she would like to say in their other car lots they have trash and lots of spare tires that they are throwing away and they are fenced in with barb wire and chain link and she is concerned about that if a car lot goes there.

Jane Hancock approached the podium. She said their lot is right across the street from the proposed car lot; 4011 Citation Drive. She said like Kristi said, right now what they see when they walk out of their front door is trees and landscaping from Ziedler Florist. She said she believes the proposed plan shows for 7 car spaces back there. She said in the last meeting Mr. Weddings attorney stated that he neglected to check the zoning before purchasing. She said this is a man that owns a land company. She asked who neglects to check zoning when you own a land company. She said he also didn't secure the proper building permits for remodeling around the building. She said they did get one for the roofing but they also remodeled the inside and outside of the building and there were no building permits secured until she called Mr. Lockwood, the building inspector who then had to make special efforts to go to their building and try to get the permits secured. She said they want them to believe

that they are a good fit for the neighborhood but they are remodeling at 1 AM in the morning; they are out there hammering and building. She said this is not a good fit for their neighborhood. She said Mr. Wedding's attorney wants them to believe that either Mr. Wedding is stupid, that he owns a land company and he can't check these kinds of things before he purchases, or that he wants to ask for forgiveness later after he already does what he wants to do and to them that is what it appears to be. She said there are 15 car lots within a very short drive of their neighborhood. She said just in the one little area between 261 and Bell Road there are 4-5 and some have luxury cars and monster trucks; there was a \$70,000 Lotus out there for sale a few weeks ago. She said nobody in their subdivision is going to buy a \$70,000 automobile. She said also many of those car lots have gone in and out of business many times. She said they are also concerned that if the car lot goes out of business then what comes next. She said they already zoned it for a car lot so are they going to have a bunch of different car lots come in. She said if they bring in that does that mean that C-2 is available, everything that is in C-2. She said so they are concerned about what comes next after this car lot fails as she is sure it will. She said they have all visited their other car lots and they block them off when they are not there and nobody can drive in or out so where do the people park that want to see those cars and you know 90% of them shop during evenings after car lots close and weekends. She said they don't shop while they are there because they don't want to be bugged by \$100,000 a year job people that are sucking the life out of them. She said they are going to park in Larry Rhodes insurance agency, the lot beside that, in front of their houses, or in the thoroughfare. She said she can't see all of the stuff that this gentleman has mentioned. She said it may be good in theory, the way he presented it, but to them it represents a decrease in the value of their property. She said this is where a lot of people get the main value of their real estate. She said if you put a car lot right across the street how do they think that will decrease their value. She said he is talking about Lotus's and monster trucks... she brought pictures last time of the construction trucks and she is sure they are costly, but she can't imagine....they don't want to sit out and look at that stuff and neither does anybody that wants to purchase their property. She said it is just not a good fit for their neighborhood. She asked the people who are here against the rezoning petition to stand (half of the room stood). She said by the way they have obtained 20 more signatures so they have a total of 60 signatures.

Larry Rhodes approached the podium. He stated he owns the property at 8688 Ruffian Lane which is the property to the west and adjoining this property. He said he built that building 20 years ago and to give them a little history of that subdivision; the developer had a great idea. He said he wanted to put residential in a residential section and they wanted to put small business in a strip along the highway, which at that time was a 2 lanes and a small ditch. He said where ERA realty is was a convenient store; this was probably 25 plus years ago. He said he thinks the developer had a good idea; lets put some small business up by the highway, don't give them access to the highway itself, give them access to Ruffian Lane that has no parking on either side of it and it already is a race course. He said so if they are going to have 200 cars in there a month, that will really make 2 or 3 times that number because people will be driving in and test driving 2 or 3 cars before they decide to buy or go back home so you really have to at least triple the number that he had there. He said Bret Schulties is in the insurance business, and he does not know this but he suspects that his letter of recommendation is because this is a client of his. He said he is not his insurer and he won't be but he thinks there is a little bit of conflict of interest there if he is his client. He said he certainly does not have locks on his parking lot and he doesn't intend to put locks on them but that is where these people are going to park if Mr. Weddings locks his parking lots up. He said with the way it's laid out, with 50 more parking spaces in front of the building, he doesn't know where he is going to park

people to come look at a car. He said plus most used cars that are purchased have to have some sort of repair done to them so they are going to have to have some sort of repair facility inside of that building to prepare the cars that he purchases to get them ready to sell. He said so not only is it a used car lot it is a repair facility. He said he has been to many zonings like this and he has been for and against and he has had projects that have been approved and disapproved, but he thinks the intent of the original developer...if you look across the highway there is a lot of land over there for sale that has good zoning on that side of the highway. He said that neighborhood is not 35 years old; it was raw cornfield not too long ago. He said Triple Crown was zoned properly in the beginning, it is compatible with the use that is on there now and he thinks it should stay that way. He said he wasn't here for the first meeting but at that point in time he thinks they thought they should not rezone it and he asks that they continue with that thought.

The President stated before anyone else comes forward, this may be abrupt of him and he does not want to cut off any due process but he knows how the process works and it's not necessarily a waste of time. He said it is recorded and will be in the minutes and we can continue on but he wants to ask council first because as they told them there are 4 people on the committee and it has to be one way or the other vote for a recommendation to go to the Commissioners who will have their opportunity to have their hearing part as well. He asked council if he was out of line by asking a member how they are going to vote because he knows as a general rule this is something that goes....he is a Commissioner and he always abstains so we are not going to have 4 votes one way or the other anyway.

Attorney Doll said if the Commissioner knows that he is going to abstain then he can tell us now and probably save...

The President asked Mr. Reid if he was going to abstain on this vote.

Richard Reid said yes.

The President said so you are going to abstain.

Richard Reid said yes, at least.

Kristi Senger said if he is going to at least abstain then that means he could vote against it.

The President said no. He said there will be a vote, he is asking to suspend the rest of another hour meeting that he can see happening of hearing their concerns, and he is not trying to cut out their concerns, but he knows more than likely the vote.....if they would like to continue they can but he can pretty much tell them the vote is going to go without a recommendation to the Commissioners, but we haven't voted yet but they have been indicated that there will probably be an abstain so it will either be 3 negatives, 3 positives with one abstention is more than likely the way it is going to go.

John Muehlbauer approached the podium. He said this meeting was at 6:00 so he was able to make it but if they are going to try to move it to 4:00 to make it easier to keep people from coming...

The President said that is not what they are doing, it is the process; it will go to the 4:00 meeting.

John Muehlbauer said but people are here...

Attorney Doll said every final decision on a rezone has to be done by the Board of Commissioners. He said the Board, in Warrick County has for years met at 4:00pm. He said it has been various days of the week but it has always been at 4:00pm.

John Muehlbauer said he accepts that but they are trying to cut off people from speaking...

The President said no he is not so if he wants to speak about this then go ahead and speak otherwise he can have a seat.

John Muehlbauer said that is what is sounded like; let's cut these people out...

The President said that is not what he meant and he apologizes if that is what it was taken for. He asked if there was anybody else who was there to speak for or against the project.

Sheila Lacer asked Mrs. Hancock if she had submitted the petition with 20 more signatures.

Mrs. Hancock said yes and submitted the petition.

Millard New approached the podium. He said he lives at 4033 Triple Crown Drive. He said he bought his property in December of 1979. He said before they bought their property they checked out the surrounding zoning and they liked what they saw. He said at that time there was a cornfield to the west and a cornfield to the east so they knew things were going to be coming in but because of the zoning they felt like the county was going to be taking care of them. He said the zoning has taken care of them so far. He said where the library and Old National is that was not owned by the same guy who owned their subdivision; he wanted that to be C-4 and the reason is because he was going to put a bowling alley in and a lot of them went and remonstrated against it. He said that turned out well because the county came in and built a library there and Old National is a good neighbor. He said what he promised was that he was going to put pine trees on the west end of the property and was going to stagger them like they have at Eastland Mall so it hides everything behind there. He said he went down there and looked at it and it did so it was okay, they still didn't want it but it turned out okay. He said this guy never put in what he said he was going to put in is his point. He said he put in a single row of pine trees and half of them died. He said he sold the property and got out from everything so you can't believe the promises of someone who is going to rezone; you can't hold them to it. He said ten years from now you look at it and you won't know that this is what he said he was going to do. He said his kids used to play on Ruffian Lane and today you can't do that because of the traffic and he knows that is not going to change but do not add traffic. He said you cannot believe what a contractor or a person that wants a rezoning says because ten years from now he sells his lot and somebody else wants to put \$2,000 cars in there and you can't do anything about it; it's done.

Jane Gordon approached the podium. She said her house is the second one down on Citation Drive. She said she is childhood friends with Jane Hancock. She said her house faces to the west. She said she used to sit on her front porch drinking coffee every morning but now she gets too upset thinking that is going to be a car lot she will be looking at. She said Jim Morley is a personal friend of hers and she has seen the plans with the cars all the way out to Ruffian and she dreads it. She said she will move if it goes in because she doesn't want to look at it; it is not that she has anything against

used cars because she buys used cars. She said she works in the investment business and hates taking that first year hit on a new car and she is in the market for a car right now and she did what somebody else had said. She said she doesn't go looking during the day because she doesn't want to be beat up by a salesperson. She said she went to Fulton and Diamond one evening and they are right, the cars are blocked all the way so she had to double park as close as she could. She said she looked for surveillance cameras very closely, if they have them they are very well hidden. She said they mention luxury cars only, no young kids, age target market of 52 to 60 year average. She said what she saw on Fulton makes her wonder about that. She said she did see one older Lexus, 3 bulldozers that were cute and painted up. She said a friend of hers is a mutual friend with Brian Wedding and said his goal is to move part of that inventory from there to Newburgh. She said didn't see one Cadillac, one BMW, she did see one Lexus, she did not see what he is talking about; she saw some big trucks, bobcats, muscle cars, some little one ones but she did not see any security cameras but maybe they are very well hidden. She said she has lived here for 15 years now and when we are talking about being in a flood zone we are in a flood zone. She said she got on foot in the last big flood, she got a picture but did not bring it tonight... the Ruffian Citation sign... there was a lady hoofing, the water was up to her knees. She said she asked her where she was going and she said she had to get to work at the bank. She said she was literally up to her knees in water and every car left in the ATT parking lot which is just east of the car lot was totaled. She said Jim Morely told her that an outside firm did the traffic counting but she is curious why they only used the weekend traffic because those things are very noticeable and they were there longer than that.

Jeff Valiant said it was Friday and Saturday.

Jane Gordon said they may want to ask for the traffic count Monday through Friday. She said when she visited Fulton and Diamond what she noticed was neon lights. She said she would have to look at it out of every single front window. She said she has big pictures...Frame Road is closed right now. She said she will go out of her way to not cross traffic. She said there is a nursing home at the end of Ruffian. She Mr. Tom Tomkins runs up and down Ruffian Road; he is a double amputee who lives in the nursing home. She said he waves to all of the traffic coming up and down Ruffian every single day. She said she met him and took a picture of him with Ziedlers in the background. She said the other thing, the Library has bicycle racks....you got an S curve where if Frame is closed like it is now...the kids could be affected by that. She said there is a rest home for men at 4022 Triple Crown with about 10-12 handicap men. She said if they thought it was a good idea to put that there then how could they, in good faith say it's a good place for a car lot. She said it was a big meeting and lots of people were there to fight it but they approved it.

Richard Reid said none of them were on the Board then.

The President said let's not rehash something that happened in 2001, they got the point.

Jane Gordon said from selling life insurance she can tell them it's the old 10-3-1 rule. She said you call 10 people, 3 look, and 1 buys. She said there are statistics that are proven that you cannot deny about the sales process; 10-3-1.

Mark Hancock approached the podium. He said a lot of them won't be here next time. He said no one has mentioned how the cars will get in and out of there; roll backs. He said no one has mentioned the orange, green, and red pendants that are going to be out there; the big green Gumby.

He said underlining all of this is it is not the car lot that he is so concerned about it's the zoning change.

Sheree Muehlbauer approached the podium. She said she live at 4144 Count Fleet Drive. She said before they moved to the neighborhood 15 years ago they were concerned about the commercial businesses out there so they checked because that was a concern to them, they have 3 children. She said the homes there are not super expensive so for them to maintain a normal average neighborhood that was a concern to them. She said she asks them to consider this because someday they are going to sell their homes; it is the most expensive thing that that have and they want to make sure they get a return on that value.

Rick Martin approached the podium. He said he grew up in Newburgh and lived there most of his life so he can appreciate that in 1979 the area looked different than it does now. He said there were more cornfields there was not a Lefflers there, a bank, a library. He said times have changed and the area has grown over the last several years whether they like it or not that's where it is. He said a lot of what he is hearing from the remonstrators makes him believe that they don't want any business here because they are talking about handicap people walking up and down the street, jogging on the street, things of that nature. He said any business is going to generate traffic. He said even if this business creates what Mr. Rhodes was suggesting of 600 cars a month; that is maybe 8 to 10 cars a day. He said he would guess that may be less than the traffic that he has coming and going out of his business. He said we chose Friday and Saturday to get the traffic counts to get a weekday and a weekend; the weekday, Friday was about 500 higher than the weekend count. He said they may have had those strips out there longer than that; he doesn't know if they were collecting data then or not. He said his client contracted with them for two days and they felt a Friday and Saturday would give them the best idea of what traffic would be. He said one of the things that was mentioned that they will have a car dealership so they will also have a repair shop but again, that is not a permitted use there. He said his client has another off site facility where repairs will be done. He said they already have a repair shop in the neighborhood there, it's called Lefflers. He said he can understand why they wouldn't want a second one there and that is something that is not going to happen here. He said there was something mentioned about his other properties having barbed wire fencing and stuff like that; he would point out that those are rental properties that his client uses for those businesses and he's not allowed to change the fixtures or modify anything that is already on the property. He said those exist because he can't make those changes. He said he thinks this is a better use than that remaining a vacant building. He said he thinks this should be approved. He said the reason he bought that lot is because it fronts SR 66 that has a lot of traffic to attract business. He said the lots across the street, to his knowledge one doesn't have an existing building and others do not actually front the highway. He said so he found this lot that fits his budget, needs, and use so for people to say he should have bought a different lot; it is his business to run, his choice as to where he wants to buy. He said he thinks it was an oversite on his part; he thinks the observation they made is the area is so commercial and he thinks it was an oversite and they couldn't imagine they couldn't do this here. He said so rather than going ahead and just doing what they wanted to do they came before them, and petitioned them for a rezoning of this property. He said the flooding issues will be an issue no matter what business is there and if you get flooding then you got flooding; that is what insurance is for. He said lastly there was mention about tearing down trees and landscaping; the additional parking that is going to be added will be to the side towards SR 66 not towards their neighborhood.

Inaudible comments.

Rick Martin said that is based on requirements from Vectren showing maximum usage; it is also his understanding that Vectren, because of the agreement they will be required to create additional green space. He said it is their intention not to put additional parking on the side there that will face the neighborhood but to put landscaping and obviously any inventory that they have they want to put on the highway so it is not his clients intent to put anything there other than landscaping. He said they are not going to put a wall up, barbed wire fencing, or anything that would detract from the neighborhood. He said he recognizes these are all concerns but if he wanted to put a barbed wire fence around a liquor store he could do that, or a gas station with a brick wall around it, he could do that. He said there are many uses in the C-1 that would create much more traffic and far more problems for the neighborhood than this proposed use. He said he thinks this use is consistent with the area and with the neighborhood and they are not asking them to open it up to all C-3, just to sell the cars.

Kristi Senger said gas stations are in C-2.

Rick Martin said if he is going to be corrected here then he will correct that; convenient stores and fueling facilities which do not offer auto repairs, number 7 section 3 of article 8.

Jeff Willis asked what kind of trucks they will use to bring in the cars.

Renee Van Tassell stated they have a small truck; it is a heavy duty diesel truck but it is not a semi or 30 car carrier. She said it holds three cars; they are going to sell 20 cars a month, they do not need to reload 30 or 50 cars at a time.

Jeff Willis said he could picture what kind of vehicle it was but he wanted to make sure the remonstrators understood.

Rick Martin said the traffic log showed heavy vehicles to be around 5 percent and he does not think it will be anything that will add to that. He said it may be once a month that they will replenish vehicles; he really doesn't know but he doesn't think it will be anything that will increase heavy vehicle traffic.

The President asked counsel if it were to be approved, the C-3 what would happen if it folded or went bankrupt.

Attorney Doll said it would revert and go back to C-1 if that was made a condition.

The President said if it was not a condition then it would remain with the Use and Development Commitment; the Use and Development Commitment goes with the zoning.

Attorney Doll said yes, it would be anything in a C-1, C-2 and one use...

Kristi Senger said so it does allow everything in the C-2. She said they have been told two different things by everybody that they talk to at the Planning Commission and when they call the lawyer he doesn't return calls.

The President said in the Use and Development section three paragraphs two through thirty-two. He said paragraph one...

Kristi Senger said they were not given the Use and Development. She said they never posted the Planning Commission meeting on their front door; the sign they have says September 14th and she is under the impression they are fast and loose with the rules and She said so they are saying all of the C-2 uses are open; we are talking hotel/motels, indoor recreational, auditorium, theaters, bowling alleys, billiard rooms, dances rooms... She said the problem is no she does not think they will put a bowling alley in their location but keep in mind the lot next to them is much larger and if they allow them rezoning and it is not spot zoning and then that place requests it. She asked if she was correct that if they rezoned then the lot next to them asked to rezone then it would not be spot zoning.

Attorney Doll said it depends on the facts.

Kristi Senger said no it doesn't.

Attorney Doll said then she disagrees with the Supreme Court that says it depends on the facts.

Kristi Senger said it depends on who is sitting there at the time and who has their jobs. She said they were told one thing, they didn't include the Use and Development to the landowners next to the property, they did not post the sign on the building telling them what the Use and Development was. She said she is not sure what their requirements are because it doesn't say when they had to post it but she is guessing it was sometime before the meeting and she took a picture before she came to the meeting showing they did not update their sign. She asked what the rules are about posting the notice on the property about the meeting.

Mrs. Lacer stated they received the orange card when they first filed the application and this is the same application so it is just following all of that...

Kristi Senger said so they didn't have to inform the public of the meeting.

Mrs. Lacer said it was advertised in The Standard again...

Kristi Senger said and how many people subscribe to that paper. She said it is required to be posted on the property.

Attorney Doll asked Ms. Senger to let Mrs. Lacer answer.

Mrs. Lacer said by state statute we have to advertise in the Warrick County paper. She said and they had to send the notice; State Statute says they must send the notice and may send anything else should they so choose and they did not choose to send the Use and Development. She said we do not require them to that; we require them to send the notice. She said this also tells them that the applications are on file in our office and everything that we have in our office is public record and she can come in at any time to take a look at that.

Kristi Senger said we called and left messages and people never did call us back. She said they spoke to people in the office who were not clear, actually she believes she spoke to Molly and she

took their information and said somebody would call back and explain. She said when she was on the phone with her one of them said it would allow C-3 but nothing else, one of them said C-3 and C-2 but they weren't sure and we were told to call the Attorney which they did. She said they left messages and the attorney did not return messages and she is guessing it is just a message service where he doesn't actually ever answer the phone.

Attorney Doll said she does not know what he does.

Kristi Senger said they were never able to talk to anybody and never got a call back.

Attorney Doll said he had one message.

Kristi Senger asked if he called it back.

Attorney Doll said no.

Kristi Senger said okay thank you for admitting that you had a message and you chose not to call.

Attorney Doll said one message.

Kristi Senger asked why would it require more than one message if he is telling her right now in a public meeting, on the record that he received the message that he chose not to call back, why would she have to call back.

Attorney Doll said she is not the only person he talks to.

Kristi Senger asked if they are wanting to allow the C-2 use and the C-3 use or are they amending their thing to just allow the C-3 car lot.

Rick Martin said it is their intent to use it for a car lot, nothing else.

Kristi Senger said so are you amending it to just allow the C-3 car lot or do they want to allow all C-2 uses because she read the minutes from the last meeting and they can, at this meeting allow them to change that.

Renee Van Tassell stated she believes they have answered this question and she is not going to let her badger them like she badgered everybody else.

The President said she has pointed out that it is their choice to do...

Kristi Senger said so are they?

The President said he will address that, she is not to address the applicant.

Kristi Senger said so they are saying that they were not required to post notice of this meeting.

Mrs. Lacer said no because it is following; this is the same application. She said Ms. Senger was here in September, she was at the Commissioners meeting. She said the point is to notice the neighbors and the neighbors know that the meeting was following.

Lula Bailey approached the podium. She said she lives at 4220 Secretariat Drive. She said she has been listening to everything that has been said and one of the things she wanted to address was that they didn't get the proper building permits when they started remodeling. She said how can they trust them that they will have a car dealership and won't have repair in that building. She said if they are not honest enough to get the building permits to remodel to begin with then how can they trust them now when they say they are not going to have auto repair in that building when they can't even get a simple building permit. She said also who would want a car dealership in their neighborhood. She said she does not and they wouldn't either. She said she knows they want what is best for the county but also think about it as a homeowner.

Jane Hancock asked what is the difference between a Variance and a Use and Development. She said the last time they were here they were offered the variance which included the car lot and they chose not to take that. She said at that time they were told that if they didn't take it then they would have to wait 6 months to reapply.

Mrs. Lacer said a variance is a Board of Zoning Appeals application. She said that is something to get relief from an ordinance. She said a variance is not anything that was offered to them. She said what they were offered was to amend the application at that time and they called a recess. She said Ms. Van Tassell went out called her client which he declined.

The President said that was to do the Use and Development.

Mrs. Lacer said yes that was to do the Use and Development but they declined and it went to the Commissioners.

Jane Hancock said did they not say at that time that they would have to wait 6 months.

The President said that was if it was voted down.

Mrs. Lacer said if it was voted down and denied by the Commissioners then they would have to wait 6 months but it was never voted down, the Commissioners never did act on it. She said they decided that it should come back to the Area Planning Board with the amendment and send out new notice and new advertisement, which is what they did. She said so it is the same application that they heard a month ago but this time it has the Use and Development with it.

Jan Hancock said when they called the Area Planning office they said they had not heard of them doing this for years.

Mrs. Lacer said it doesn't happen often.

Jane Hancock said they were confused about that issue.

Jeff Willis asked if they got rid of the C-2, could they do that tonight or would they have to come back.

Mrs. Lacer said they could do that tonight.

The President asked if that was anything that they were considering.

Rick Martin said it was not their intention to encompass all of C-2 so if it was written that way the intention was to cover the car lot and intended usage but still retain the C-1.

The President said he would say it is.

Mrs. Lacer said it does; any use permitted in a C-2 district subject to the area, height, lot coverage, and minimum floor area regulations specific to the C-2. She said it says 2 through 32 and it should say 1 through 32. She asked if we could strike it out.

The President said it would have to be voted on and if that is what they are requesting.

Rick Martin said let me refer to my client, she is nodding her head so that is what we are requesting; to amend that to reflect paragraph 1 instead of 2. He said so if we change the 2 to a 1 then that would also encompass all of the C-2 permitted uses.

The President said we have a request from the petitioner to amend their Use and Development to read section 3 paragraphs 1 through 32 which would then exclude any C-2.

Jeff Valiant made the motion.

The motion was seconded by Jeff Willis. The President voted in favor of the motion and Rick Reid abstained therefor it did not carry.

Attorney Doll said so what they have is as submitted.

The President called for a motion.

Discussion ensued amongst audience members.

Jeff Valiant made a motion to recommend approval of PC-R-15-12 to the Commissioners.

The motion was seconded by Jeff Willis and opposed by the President and Rick Reid.

The President said it is 2-2 so this will go to the Board of County Commissioners on December 9th (should be December 14, 2015) at 4:00pm with no recommendation where the Commissioners will have the final say on the rezoning.

An audience member asked why they had a meeting. He said when you have a quorum but you suspect or know that you're not going to have vote quorum to go through the procedure with all them there. He asked if there were more Board members.

The President said there are three more Board members that we knew this afternoon were not going to be here.

The audience member asked then why did they have the meeting.

The President said because we have a quorum. He said it could have gone one way or the other. He said it really doesn't matter; the County Commissioners have the final say. He said we have recommended approval and it has been denied; we have denied and it has been approved. He said the Commissioner have the final say; we are a sounding board to give this and give a recommendation to the Board which we have done.

The audience member said they are a board that recommends approval but they didn't do that.

The President said no and it could have happened the same way with 3-3-1.

The audience member said so we have no opportunity with this structure knowing one of their members was not going to vote...

The President said but he did.

The audience member said well he voted no. He said he didn't know they are talking about the same thing. He said he thought they were talking about the amendment.

The President said they already voted on that; that got an abstention so it didn't pass so they voted on it the way it was presented and it went 2-2 so it did not pass and is going to County Commissioners with no recommendation.

The audience member said this is ridiculous to bring them up there to a meeting that they know is going to pass.

The President said he tried to speed it up earlier. He said the next meeting will be on December the 9th at 4:00pm with the County Commissioners in this room.

PC-R-15-18 – Petition of Oak Grove Industrial, LLC, Walter L. Howard, Ptnr. to rezone 34.1184 acres located on the S side of Oak Grove Rd. & the W side of Epworth Rd. approximately 390' W of the intersection formed by Oak Grove Rd. & Epworth Rd. Ohio Twp, from "A" Agriculture to "M-2" General Industrial. *Complete legal on file.*

Bill Bivins and Walter Howard were present.

The President called for a staff report.

Mrs. Lacer said we have all return receipts. She said there is no minimum area required for industrial zoning. She said the Comprehensive Plan projects the south side of Oak Grove Road to commercial and the north side of Oak Grove to Industrial. She said the existing land use is farm ground. She said the surrounding zoning is to the North is zoned M-1 (Oak Grove Investments ~ was O'Brian

Trucking) and in the NE corner is M-1 owned by Mr. Howard; West is Agriculture ~ residence; East is C-4 ~ farm ground and south is some C-4 and Agriculture with a residence. She said the majority of this property lies in a 100 year flood plain and there is a legal drain running through the property. She said it requires a 75' right of entry from the top of bank and any subdivision will need to be sent to the DNR for review for floodway. She said any permits will require a certified plot plan showing the structure to be 2 feet above the base flood elevation ten feet around the perimeter. She said the property fronts on Oak Grove and Epworth Roads and a commercial driveway will be required. She said the stated use is Manufacturing/Commercial which would be allowed and the application is in order.

Bill Bivins said if you've been down Epworth Road you will see that Newburgh is extending the sewer which will be available for this property.

Mrs. Lacer asked Mr. Howard if he planned to subdivide the property.

Mr. Howard said he only wanted to buy about a third of that to expand his Tri-State Fire Protection business, but the family said all or none so he plans on selling the back two-thirds of it in the future.

Being no more questions from the Board and no remonstrators present, the President called for a motion.

Jeff Valiant made a motion for a positive recommendation of PC-R-15-18 to the County Commissioners.

The motion was seconded by Richard Reid and unanimously carried.

The President said the motion carries and will go to the County Commissioners at 4:00pm on December 14th.

Bill Bivins asked if they could go in front of the last applicant. He said in Vanderburgh County, when they have a rezoning they play a recording that says the petitioner has ten minutes.

The President said we used to have that but the Attorney said we could no longer do that.

Attorney Doll said the Supreme Court says you cannot do that.

Bill Bivins said Vanderburgh still does.

Attorney Doll said he is waiting for someone to light them up because you can't do that.

Bill Bivins said it is hard not to get people to say the same thing over and over.

Attorney Doll said he knows but you have to give everybody their opportunity.

OTHER BUSINESS:

None

ATTORNEY BUSINESS:

Attorney Doll said APC vs Asher is set for hearing this Thursday at 2:00 pm to see if the status of that is cleaned up. He said we should probably send somebody out there to see it.

DIRECTOR BUSINESS:

None.

Being no further business the meeting adjourned at 7:35 p.m.

Guy Gentry, President

ATTEST:

Sheila Lacer, Assistant Director